

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4302**

BY DELEGATE SMITH

[Originating in the Committee on the Judiciary;

January 16, 2024]



1 A BILL to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to modifying the criminal penalties imposed on a parent, guardian,  
3 custodian, or person in a position of trust in relation to a child for child abuse resulting in  
4 bodily injury, serious bodily injury, and child neglect resulting in bodily injury, serious bodily  
5 injury, and child abuse or child neglect creating risk of injury; providing that a prior  
6 conviction under this section subjects a person to increased penalties; and providing a  
7 definition for a prior conviction.

*Be it enacted by the Legislature of West Virginia:*

#### **ARTICLE 8D. CHILD ABUSE.**

##### **§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

1 (a) If ~~any a~~ a parent, guardian, ~~or~~ or custodian, or person in a position of trust in relation to a  
2 child shall abuse abuses a child and by ~~such the~~ the abuse ~~cause such~~ causes the child bodily injury  
3 as ~~such the~~ the term is defined in §61-8B-1 of this code, then ~~such the~~ the parent, guardian or custodian  
4 ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor  
5 more than \$1,000 and imprisoned in a state correctional facility for ~~one~~ not less than two nor more  
6 than ~~five~~ 10 years, or in the discretion of the court, be confined in jail for not more than one year.

7 (b) If ~~any a~~ a parent, guardian, ~~or~~ or custodian, or person in a position of trust in relation to a  
8 child shall abuse abuses a child and by ~~such the~~ the abuse ~~cause said~~ causes the child serious bodily  
9 injury as ~~such the~~ the term is defined in §61-8B-1 of this code, then ~~such the~~ the parent, guardian or  
10 custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than  
11 \$1,000 nor more than \$5,000 and ~~committed to the custody of the Division of Corrections~~  
12 imprisoned in a state correctional facility not less than ~~two~~ five nor more than ~~ten~~ 15 years.

13 (c) ~~Any~~ A parent, guardian, ~~or~~ or custodian, or person in a position of trust in relation to a  
14 child who abuses a child and by the abuse creates a substantial risk of death or serious bodily  
15 injury to the child, as serious bodily-injury is defined in §61-8B-1 of this code, ~~to the child~~ the child is guilty

of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or both fined and imprisoned.

(d)(1) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child who has not previously been convicted under this section, ~~section four of this article §61-8D-4 of this code,~~ or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in ~~section one, article eight-b of this chapter §61-8B-1 of this code,~~ to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both~~

~~(3)~~(2) For a ~~third or subsequent~~ second offense under this subsection or for a person with ~~two or more~~ one prior convictions under ~~section four of this article §61-8D-4(d) of this code,~~ or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than ~~three~~ five years, or both.

(e) Any person convicted of a second or subsequent felony offense under this section, under §61-8D-4 of this code, or under a law of another state or the federal government with the same essential elements, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

~~(e)~~(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) ~~Shall~~ May not be required to register pursuant to §15-13-1 et seq. of this code; and

(3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

~~(f)(g) Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian or custodian from providing reasonable discipline to a child.

**§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.**

(a) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child neglects a child and by such neglect cause the child serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 ~~dollars~~ or imprisoned in a state correctional facility for not less than one nor more than 10 years, or both fined and imprisoned.

(c) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child grossly neglects a child and by that gross neglect creates a substantial risk of death or serious

bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 ~~dollars~~ or imprisoned in a state correctional facility for not less than one nor more than ~~five~~ 10 years, or both fined and imprisoned.

(d)(1) If a parent, guardian, ~~or~~ custodian, or person in a position of trust in relation to a child who has not been previously convicted under this section, ~~section three of this article~~ §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in ~~section one, article eight-b of this chapter~~ §61-8B-1 of this code, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both~~

~~(3)(2) For a third or subsequent~~ second offense under this subsection or for a person with ~~two or more~~ one prior convictions under ~~section three of this article~~ §61-8D-3(d) of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than ~~three~~ five years, or both fined and imprisoned.

(e) Any person convicted of a second or subsequent felony offense under this section, under §61-8D-3 of this code, or under a law of another state or the federal government with the

40 same essential elements, may be imprisoned for a term up to twice the term otherwise authorized,  
41 fined an amount up to twice that otherwise authorized, or both.

42 ~~(e)~~(f) The provisions of this section ~~shall~~ may not apply if the neglect by the parent,  
43 guardian or custodian is due primarily to a lack of financial means on the part of such parent,  
44 guardian or custodian.

45 ~~(f)~~(g) Any person convicted of a misdemeanor offense under this section:

46 (1) May be required to complete parenting classes, substance abuse counseling, anger  
47 management counseling, or other appropriate services, or any combination thereof, as  
48 determined by Department of Health and Human Resources, Bureau for Children and Families  
49 through its services assessment evaluation, which shall be submitted to the court of conviction  
50 upon written request;

51 (2) ~~Shall~~ May not be required to register pursuant to the requirements of §15-13-1 *et seq.*  
52 of this code; and

53 (3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or  
54 parental rights automatically restricted.

NOTE: The purpose of this bill is to modify the criminal penalties imposed on a parent, guardian, custodian, or person in a position of trust in relation to a child for child abuse resulting in injury and child abuse or neglect creating risk of injury.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.